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House of Representatives
Committee on Ethics

A GUIDE TO ETHICS



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The purpose of this booklet is to provide members and employees of the House of Representatives with accurate summaries of the Conflict of Interest, Financial Disclosure, Open Meeting, and Campaign and Political Finance Laws. It is meant as a reference tool and is not intended as a complete explanation of the aforementioned laws. If you have any questions concerning these laws, please contact the respective agencies or the office of the Counsel to the House of Representatives.

The information in this Guide includes laws through the 1986 Regular Session.

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The Conflict of Interest Law

Chapter 268A

Introduction

Chapter 268A, the so-called Conflict of Interest Law, governs the conduct of elected and appointed state, county, and municipal officials and employees. In general, the law is intended to assure that the conduct of these public officials and employees, in the execution of their public obligations, is not jaded by their personal interests. The law is constructed in such a manner so as to curtail conduct which intimates even the appearance or potential of conflict.

The 28 sections of Chapter 268A group similar prohibitions according to the level of government. This handbook focuses only upon those sections pertaining directly to members, officers and employees of the General Court. The State Ethics Commission is the primary civil enforcement agency for violations of Chapter 268A and is empowered to issue opinions on close questions. They are located at One Ashburton Place, Room 1413, Boston, MA 02108 and may be reached by calling 727-0060.

Section 2 — *Corrupt gifts, offers or promises to influence official acts; corruption of witnesses (G.L.c. 268A, §2)*

Section 2 prohibits legislators from corruptly seeking or receiving gifts, promises, bribes or anything else of value in exchange for being influenced in the performance of their official acts or duties. Under this section, penalties are levied upon both the legislator soliciting or accepting the gifts or bribes, as well as private parties offering them.

Specifically, legislators may not solicit or receive anything of value in exchange for:

1. Being influenced in the performance of any official act;
2. Being influenced to commit, collude, or allow the opportunity for the perpetration of any fraud on the Commonwealth or any state, county or municipal agency;
3. Being induced to act or refrain from acting in violation of their official duties;
4. Being influenced in either giving testimony under oath, or in the alternative, to refuse or avoid giving testimony before any

court, legislative committee or any agency, commission or officer of the Commonwealth authorized to take such testimony.

For a violation of the terms contained in this section, the State Ethics Commission has determined that there must be a finding that the public official acted with a “corrupt intent.”

- “Corrupt intent” exists when the public official and the private party agree that official action (or inaction) will result from the receipt of anything of value.
- “Official action” includes any decision or action in a particular matter or in the enactment of legislation.
- “Anything of value” includes not only money, but any type of service or consideration given for the benefit of the public official or for the benefit of another person or entity.
- “Particular matter” includes any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of legislation by the General Court.

Example: A public official violates Section 2 by demanding a cash payment from a lobbyist in return for his or her vote on a particular bill.

Example: A public official violates Section 2 by accepting the cash payment.

Section 3 — *Additional compensation or gratuities for Official Acts (G.L.c. 268A, §3)*

Section 3, like Section 2, deals with the solicitation or receipt of anything of substantial value in exchange for the interference in the performance of official acts. Section 3 is more loosely interpretive, however, because “corrupt intent” is not required on the part of the elected official. Hence, conduct not *overtly* corrupt is still covered by the conflict of interest law.

Section 3 prohibits elected officials from seeking or receiving anything of “substantial value” given for or because of their official acts or acts to be performed. The receipt of such compensation will violate this section even if it is given by a private party merely out of a sense of gratitude with no intent whatsoever to influence the

official in the performance of his or her duties. Although the exact dollar amount of “substantial value” is not defined in the statute, the courts have interpreted it to mean anything of \$50 or over. As in Section 2, the compensation need not be monetary.

It is important to note that Section 3 excludes certain forms of compensation; namely that “provided by law for the proper discharge of official duties” as well as witness fees, lawful campaign contributions, and other related and reasonable expenses.

Example: A public official violates Section 3 if he/she accepts an honorarium for a speaking engagement if circumstances indicate that the compensation was actually an improper gratuity. Such circumstances would include:

1. That the speaking engagement wasn’t legitimate;
2. That the honorarium was excessive for the nature of the engagement;
3. That the organization has a clear interest in pending legislation that the official would be in a position to affect.

Section 4 — *Restrictions on Outside Activity (G.L.c. 268A, §4)*

In Section 4, legislators are subject to different restrictions than are state employees and special state employees. Legislators may receive compensation other than the salary received by the Commonwealth for a personal appearance before a state agency if: 1) The matter is ministerial (i.e., filing of tax returns, license or permit applications, incorporation papers or other such documents); or 2) it is an appearance before a court of law; or 3) the proceeding is quasi-judicial in nature. A proceeding is quasi-judicial if:

- the action of the state agency is adjudicatory in nature;
- it is appealable to the court system; and
- both sides are entitled to private counsel

Legislators are expected to speak and act on behalf of their constituents; hence, uncompensated activity by a state representative is not a violation of this particular section of Chapter 268A.

This section does not prevent a legislator from holding an elective or appointive office in a city, town, or district or receive the salary for such office.

This section does not prevent a legislator from requesting or

receiving compensation in relation to the filing or amending of state returns.

Example: Under the special provisions of §4 applicable to legislators, a member of the General Court who is also an attorney may not represent for compensation an applicant for a common carrier certificate in a hearing before the Department of Public Utilities for the following reasons:

1. The inquiry is not ministerial;
2. The inquiry is not a quasi-judicial proceeding, and;
3. The appearance is not before a court of the Commonwealth.

It is immaterial that the inquiry could possibly lead to a court proceeding by some other state agency.

Example: A member of the General Court may represent a client in a court appeal of a decision made by a state agency.

Section 5 — Former State Employees and Partners of Present and Former State Employees (G.L.c. 268A, §5)

The purpose of this section is to insure that former state employees:

1. Do not abuse their past affiliations in government and;
2. Do not use confidential information obtained while serving in the government to obtain an unfair advantage for themselves or any others.

This section is not intended to deny a former employee or former member of the General Court the use of any specialized knowledge acquired during their tenure. This section focuses on individual projects or decisions which are or were within their official jurisdiction. The provisions also are designed to curtail partners from taking unfair advantage derived from their affiliation with a past or present legislator.

I. Former Legislators

Section 5(a) prohibits a former legislator from acting as an agent or attorney for, or receiving compensation either directly or indirectly from anyone other than the Commonwealth or a state

agency in conjunction with any matter in which the state or a state agency is either a party or has a direct and substantial interest *and* in which that individual participated during his tenure. Hence, if you were involved with a “particular matter” as a member of the General Court, you may never become involved in that same particular matter when you leave the General Court unless it is on behalf of the state. “Particular matter” is defined as “any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the General Court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances, and property.”

Example: A former member of the General Court would *not* be prohibited by §5 from becoming involved in the marketing of real estate tax shelters *if* the shelters were not a particular matter in which he participated or had official responsibility as a legislator.

Section 5(b) focuses upon the authority formerly exercised by a member of the General Court during his or her tenure, as opposed to §5(a) which dealt with his or her actual participation on an issue. *For one year after leaving the membership of the General Court*, a former legislator is prohibited from:

1. Personally appearing before a state agency or court on behalf of someone other than the state in connection with a particular matter or has a direct and substantial interest *and*;
2. Which was within the legislator’s scope of official responsibility within a two-year period before he or she left the General Court.

It is important to note that:

1. The prohibition extends for *one year after* the legislator has left public service;
2. The restrictions are limited to appearances before courts and state agencies;
3. Compensation for the appearances is immaterial;

4. The matter must have fallen within your official responsibility within two years prior to termination of public service. You did not have to work directly on the matter in order for this section to apply.

It should also be noted that although a §5(a) or §5(b) case may arise involving the actions of a current or former state legislator, the cases are few and far between. “Particular matter” as applied to this section is very narrowly construed in these instances by the State Ethics Commission, and, with respect to legislators, especially to the enactment of special legislation.

II. Partners

Section 5(c) prohibits the partner of a former state employee or legislator for one year after the former state official leaves state service from being involved in any activity which Section 5(a) prohibits the former state employee or legislator from being involved in.

Note: “Partner” is not defined in Chapter 268A; however, the State Ethics Commission has interpreted it to mean “any person who joins with the state official formally or informally in a common business venture.”

III. Lobbying

The principle lobbying restrictions are contained in Section 5(e). A former state legislator cannot serve as a lobbyist for anyone other than the Commonwealth or a state agency for *one year* after he or she leaves public service. Partners of former state legislators are subject to the same restrictions.

Example: A member of the House of Representatives does not seek re-election for a second term in 1980, and, therefore, leaves the legislature in the beginning of January, 1981. For a year thereafter, the former legislator is prohibited from serving as a lobbyist before the legislature for any private or non-state interest.

Section 6 — Restrictions on Official Actions (G.L.c. 268A, §6)

Section 6 places restrictions on actions one is allowed to take while operating *within* his or her official position. State employees and officials may not act in their official capacities on matters in which they have a personal financial interest. Since this section also addresses even the appearance of improper conduct, a public offi-

cial may not participate in a *particular matter* in which any of the following have a financial interest:

1. The legislator or his/her "immediate family" (Defined to include one's spouse and their parents, children, brothers and sisters. The State Ethics Commission has determined that sons or daughters-in-law or nieces and nephews are excluded).
2. Partner;
3. Business organization in which the employee serves as an officer, director, trustee, partner, or employee; *or*
4. Organization or individual with whom the public official is negotiating for, or with whom he/she has any arrangement for prospective employment.

Example: A member of the General Court whose legislative employee plans to marry his daughter is not subject to the mandatory disqualification of §6 because his son-in-law would not be an immediate family member.

Example: A member of the General Court may not, acting in his official capacity, pressure a state agency to award a contract to his brother.

Section 6a — Additional Disclosure Requirements for Elected Officials (G.L.c. 268A, §6A)

This section specifically addresses elected officials. If, in the discharge of his/her official duties, a member of the General Court would be required to participate in any action which would *substantially affect* his/her own financial interests, then he/she must file a written statement with the State Ethics Commission.

This written statement must include:

1. A description of the required action;
2. The nature and extent of their financial interest in the matter, and;
3. The potential conflict of interest.

Note: This section does *not* apply if the financial effect on the elected official is no greater than the effect on the general public.

For example, all legislators pay taxes, but that does not preclude them from voting on tax bills because the effect on them is no greater than that on the general public.

*The State Ethics Commission has drawn the following distinction between §6, and §6A:

Under §6, if a piece of general legislation that is not a “particular matter” would affect the financial interests of a legislator, he/she would *not* be required to refrain from acting. Under §6A, the legislator would be required to file a statement of his/her financial interests that would be affected by the general legislation with the State Ethics Commission.

Section 7 — *Financial Interests in State Agency Contracts* (G.L.c. 268A, §7)

Section 7 prohibits state employees, including members of the General Court, from having any financial interest in a contract made by a state agency. This is to prevent public officials from gaining unfair advantage due to their positions to obtain contractual benefits from the state, or even to give the appearance of being able to do so.

NOTE: — This section shall not apply if such financial interest consist of the ownership of less than one percent of the stock of a corporation.

- This section shall not prohibit a legislator from teaching in an educational institution of the Commonwealth, if that employment is on a part-time basis, and the individual does not have any official responsibility for the financial management of the institution.
- A “contract” is not necessarily a formal written document, but is any type of agreement between two or more parties where each takes on certain obligations in exchange for promises by the other. Hence, “contract” includes employment agreements, agreements for the sale of goods, provision of service agreements, grants awarded by the state to either individuals or corporations, contracts between state and local agencies, consulting arrangements, construction contracts, etc . . .

Example: A member of the General Court *would* violate §7 by entering into a housing subsidy contract with a regional housing authority which is under contract with the Executive Office of Communities and Development.

Example: A member of the General Court may participate as a developer in a rehabilitation project financed by the issuance of industrial development revenue bonds. The bonds would not constitute a contract made by a state agency for the purpose of §7.

However, the legislator may not appear personally for compensation before the Massachusetts Industrial Finance Agency in connection with the bond authorization.

Example: A legislator, whose spouse has a financial interest in a business, may not vote on special legislation which would affect his spouse's financial interest. Additionally, his spouse, who is a full-time state employee, may not have a financial interest in a contract between her business and a state agency unless she complies with the conditions for an exemption under §7(b). (See addendum dealing with rules of conduct for state employees.)

Section 8 — *Public Building and Construction Contracts* **(G.L.c. 268A, §8)**

This section forbids any state, county, or municipal employee or anyone acting on an employee's behalf from requiring a bidder on a public construction contract to purchase the necessary surety bonds or insurance from a specified insurance or surety company, agent or broker.

Section 8A — *Prohibited Appointments of Board and Commission Members* (G.L.c. 268A, §8A)

Section 8A prohibits the members of a state board or commission from appointing one of their members to any office or position falling under the supervision of that board or commission. This prohibition lasts for thirty days from the member's termination of service. This section is another example of the chapter's intent to preclude public employees from taking advantage of their employment with the state to advance their private interests.

Section 10 — *Opinions of State Ethics Commission* **(G.L.c. 268A, §10)**

The State Ethics Commission shall issue opinions interpreting the requirements of this chapter in accordance with G.L.c. 268B, §3(g).

Section 23 — *Standards of Conduct (G.L.c. 268A, §23)*

Section 23 of Chapter 268A is known as the “Standards of Conduct” section which attempts to tie up any loose ends created by the preceding sections. This section deals with some of the most basic principles and guidelines appropriate to public officials; hence, it essentially serves as a statutory code of ethics. Section 23 does not merely enumerate *specific* actions which are considered conflicts of interest, but is designed to cover actions which would give the appearance or impression of a conflict of interest while executing one’s official duties.

As applied to members of the General Court, §23 dictates that no legislator shall knowingly, or with reason to know:

1. Accept additional employment involving a salary or compensation of substantial value if the responsibilities of that employment conflict with those of his/her public office;
2. use or attempt to use his/her official position to secure unwarranted privileges or exemptions of substantial value not otherwise properly available for himself, herself or others; or
3. by his/her conduct cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his/her official duties, or that he/she is unduly affected by the kinship, rank, position, or influence of any party or person.

Such a conclusion will be considered unreasonable if said legislator has disclosed in a manner which is public in nature the facts which would otherwise lead to such a conclusion.

In addition, no current or former legislator may:

1. Accept employment or engage in any business or professional activity which will require him/her to disclose confidential information which he/she has gained by reason of his/her official position or authority, or;
2. Improperly disclose materials or data which are not considered public records and which are acquired by him/her in the course of official duties nor use such information to further his/her personal interests.

It is important to note that §23 was designed to add to and

supplement other sections of Chapter 268A. Hence, an act may violate §23 even though it is not *specifically prohibited* by any other provisions in the statute.

Any activity specifically exempted in other sections of this statute are exempted from this section as well.

The following examples illustrate types of conduct by members of the General Court which would constitute a violation of §23.

Example: A member of the General Court, elected from a particular City, may be reimbursed by a private group promoting the City, for expenses incurred in connection with legitimate appearances at a promotional event, held out of state, organized by the private group. These expenses must be limited to transportation to and from the out of state location, necessary lodging, and necessary meals.

Example: A member of the General Court may travel out of state for a speaking engagement at the expense of a private corporation because he has not had prior dealings with the corporation or any of its representatives and it has no special interest in his actions as a legislator.

Example: A member of the General Court may have his travel, lodging and meal expenses, in connection with a legitimate speaking engagement at a convention, provided by the private group having the convention as long as the expenses are limited to transportation to and from the site, lodging at the site is made necessary by the speech, and those meals immediately surrounding the speech. For the speaking engagement to be considered legitimate, it would have to be:

- formally scheduled on the agenda of the convention or conference;
- scheduled in advance of the legislator's arrival at the convention or conference;
- before an organization which would normally have outside speakers address them at such an event; and
- the speaking engagement must not be perfunctory, but should significantly contribute to the event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive or unique information or viewpoints.

Example: A member of the General Court may sign a letter soliciting gifts for a raffle being held as part of a voter registration drive. This endorsement alone does not constitute a misuse of public office to further a private or personal interest.

Example: Members of a legislative committee may use computer equipment which has been loaned to the committee by a private company, where the equipment is used for official, as opposed to personal use. Because the committee does not consider any legislation which would directly affect the company, acceptance of the equipment would not give reasonable basis for the impression that the committee would unduly favor company.

Example: A member of the General Court who serves as president of a company which receives funding under a state contract will not violate G.L.c. 268A as long as he neither receives compensation nor acts as the agent of the company in relation to the state contract.

Example: A Chairman of a legislative committee may also serve as a part-owner and attorney for a private development team with respect to a proposal to a municipal agency. Section 23 issues would be raised, however, if he were to have dealings on behalf of the team with people or entities which have a distinct and unique interest before him in the General Court.

The Financial Disclosure Law

Chapter 268B

Introduction

Chapter 268B, the so-called Financial Disclosure Law, requires elected officials and candidates for elected office to report certain financial interests and associations which may create a potential for conflict between personal interests and financial responsibilities.

Section 2 — *State Ethics Commission (G.L.c. 268B, §2)*

Section 2 establishes the State Ethics Commission as the agency responsible for the administration and enforcement of the Financial Disclosure and Conflict of Interest laws. It is a permanent, independent, non-partisan agency of the state government.

Section 3 — *Powers and Duties of the Commission (G.L.c. 268A, §3)*

Section 3 confers investigative and enforcement powers over the Conflict of Interest Law and the Financial Disclosure Law upon the State Ethics Commission.

With regard to the Conflict of Interest Law, the Commission may issue confidential advisory opinions to individuals who are or may be subject to the provisions of the conflict law. Opinions are published with identifying information deleted to protect the confidentiality of the requesting individual.

All statements and opinions filed with the Ethics Commission are available for public inspection. An individual desiring such opinions may go to the Commission offices during working hours and present:

- a written request
- an acceptable form of identification
- his or her affiliation, if any
- costs for copying the reports

With regards to the Financial Disclosure Law, the Commission must:

- Prepare and distribute Statements of Financial Interests to those individuals reporting;
- maintain an index of all statements, and preserve them for six years;

- inspect all statements to determine whether any reporting person had failed to file or has filed a deficient statement;
- make statements available upon written request for public inspection.

Section 4 — *Investigations by the Commission (G.L.c. 268B, §4)*

Section 4 requires the State Ethics Commission to investigate alleged violations and to enforce the provisions of the Conflict of Interest and the Financial Disclosure Laws. The Commission is directed to initiate a preliminary inquiry into any alleged violation of these laws upon receipt of a sworn complaint or of evidence they have deemed sufficient. If this initial inquiry fails to indicate that either law has been violated, the Commission will terminate the inquiry, and the subject and the complainant will be notified. All Commission records and proceedings of these Preliminary Inquiries are of a confidential nature.

If the Commission has been given reasonable cause to believe that either Chapter 268A or Chapter 268B has been violated, an order to Show Cause may be filed, upon a majority vote. This initiates public adjudicatory proceedings. Matters may also be resolved by a Disposition Agreement, which sets forth the findings of fact and law, as well as the violations and sanctions agreed to by the Commission and the individual who is the subject of the inquiry.

All Orders to Show Cause, Disposition Agreements, and Decisions and Orders of the Commission are public records available from the Commission upon request.

Penalties may be imposed by the Commission, including fines of up to \$2,000 for each violation. In addition, the Commission may bring civil action in Superior Court to recover for the Commonwealth the economic advantage gained in violation of the conflict law.

Section 5 — *Statements of Financial Interests (G.L.c. 268B, §5)*

Section 5 designates who must file statements of financial interest, when they must file, and what kinds of information must be reported.

The following individuals serving in state and county government are required to file annual Statements of Financial Interests for the preceding calendar year with the State Ethics Commission:

- every candidate for elected office;
- every elected official, and;
- public employees holding “major policy making positions.”

Public employees are designated as those individuals holding "major policy making positions" by the head of their agency according to criteria by G.L.c. 268B, §1 and regulations issued by the Commission.

Filing deadlines are determined by one's status within state and county government and are as follows:

- | | |
|---|--|
| • <u>Candidates</u>
(including incumbents) | Before nomination papers are filed with the Secretary of State |
| • Elected State and County Officials | Last Tuesday in May |
| • Public Employees in major policy making positions | May 1st |

Elected officials who are required to file may not continue to serve or to receive a salary unless a complete and accurate Statement of Financial Interest is filed with the Commission. Nomination papers of a candidate for public office will not be certified by the Secretary of State unless the candidate has complied with the financial disclosure law. Any individual found filing a false statement may be subject to the criminal penalties of fine or imprisonment or both.

The following kinds of information, as applicable, must be reported for the preceding calendar year:

- **Government Employment** — income, if greater than \$1,000.
- **Business Associations** — including the nature and extent of the association(s) and the amount of income derived from each, if over \$1,000. Non-profit organizations, certain types of trusts and rental proprietorships are included.
- **Securities and Investments** — the names of those with a fair market value over \$1,000 must be listed. The specific values of the securities need not be reported, however.
- **Leaves of Absence**
- **Real Property** — description and value of all real property in Massachusetts with an assessed value greater than \$1,000 in which the reporting person holds an interest.
- **Gifts, Honoraria, and Reimbursements** — aggregating more than one hundred dollars from sources with an interest in government actions.

- **Debts or Loans** — or the forgiveness of such if over one thousand dollars.

It is important to note that: Chapter 268B requires limited disclosure of interests and associations of family members. For purposes of this Chapter, “family member” is defined as “A spouse and any dependent children residing in a reporting person’s household.”

Specific Descriptions of what needs to be **Reported** and **Explicit Instructions** for **Filing Statements of Financial Interests** may be **Obtained** from the **State Ethics Commission**. **Statements Should Not be Completed Without Referring** to those **Instructions**.

Section 6 — *Gifts from Legislative Agents (G.L.c. 268B, §6)*

No legislative agent may offer or give an elected official or a member of his/her family gifts with a total value of more than one hundred dollars in a calendar year. No elected official or member of his/her family may accept such gifts.

Section 7 — *Penalties for Violation of Confidentiality and for Perjury (G.L.c. 268B, §7)*

Anyone found violating the confidentiality of a commission inquiry, giving false testimony before a commission hearing, or filing a false statement of financial interests will be subject to a fine of up to one thousand dollars, imprisonment of up to one year, or both.

Section 8 — *Retribution for engaging in Commission proceedings (G.L.c. 268B, §8)*

No individual shall suffer any retribution for filing a complaint with or providing information to the commission or testifying in any commission proceeding.

The Open Meeting Law

Chapter 30A, §11A½

Introduction

The purpose of Chapter 30A, §11A½, the “Open Meeting Law”, is to make the day-to-day workings of government bodies accessible to the public. The law generally provides that:

- All meetings of governmental bodies shall be open to the public;
- No executive session may be held unless an open session is called first, and a majority of members voted to go into executive session;
- No quorum of a governmental body shall meet in private to deliberate a decision on any matter except as provided by this section.

*It must be noted that the law does not apply to the activities of the General Court or its committees, but it does apply to the kind of statutorily created executive bodies on which they serve.

Section 11A½ — *Open Meetings of Governmental Bodies* (G.L.c. 30A, §11A½)

Executive sessions may not be held unless notice is given in an open session first, and for the following reasons:

1. To discuss the reputation, mental health, etc. (anything other than professional competence) of an individual, provided the individual is afforded the right to:
 - notification in writing 48 hours in advance;
 - be present;
 - have counsel present;
 - speak on his own behalf
2. To consider the dismissal of a public official as long as the individual being discussed is afforded the above mentioned rights.
3. To discuss collective bargaining strategy or litigation, if discussion in an open forum would be detrimental to the outcome.
4. Discuss deployment of security personnel.

5. Investigate criminal misconduct.

6. To consider the purchase, lease or general value of real estate, if discussion in an open forum would be detrimental to the outcome.

(**Note:** This only applies to *real estate*. It does not apply to the purchase or lease of city or municipal vehicles or other such objects.)

7. To comply with the provision of any general or special law or federal grant-in-aid requirements.

8. To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.

- This section does not apply to chance or social meetings as long as no final agreement is reached. The Attorney General's Office has determined that there could be a challenge of impropriety if, for example, three members of a five member commission meet for lunch and business is discussed.
- Notice of every meeting shall be filed with the Secretary of State, except in an emergency, 48 hours in advance. "Emergency" is defined as "a sudden, generally unexpected occurrence or set of circumstances demanding immediate action." (See §11A. Definitions.)
- Recordings of meetings may be made except in executive sessions.
- Accurate records of meetings must be maintained, and are a matter of public record.

Rights and Liabilities

- The Attorney General enforces the provisions of this section with respect to state agencies.
- If a provision of this section is not carried out, a justice of the

supreme court or a superior court may issue an order of compliance to the governmental body in question.

- An order may be sought by 3 or more registered voters, the Attorney General, or the district attorney for the district in which the government body in question sits.
- Such order may invalidate any actions taken at the meeting in question.
- Such order may require the records of said meeting to be made public unless the presiding justice authorizes secrecy.

The Campaign and Political Finance Law

Chapter 55

Introduction

Chapter 55 is an explicit statute which covers every aspect of the financing of all non-federal, political campaigns run in the Commonwealth.

Specifically, Chapter 55:

- Regulates where and in what manner campaign funds may be raised and spent;
- Requires the disclosure of all contributions received and expenditures made during the course of a political campaign and subsequent tenure in office;
- Regulates certain conduct surrounding the raising and spending of campaign funds, including the activities of public employees.

The Office of Campaign and Political Finance is the principal administrative enforcer of Chapter 55, and is empowered to issue opinions. They are located at One Ashburton Place, Room 1004, Boston, MA 02108 and may also be reached by calling 727-8352.

Forms to Be Filed:

Statement of Organization of a Political Committee (Form CPF—101)

- Includes names and addresses of the candidate, the committee Chairman and Treasurer;
- The committee or candidate may not accept any contributions or incur any expenses until this form is filed, which authorizes the treasurer to execute these transactions.
- The law does not *require* the candidate to form a committee, but the majority of legislative candidates do have one.

Campaign Finance Report

(Form CPF-102)

Includes summaries of the following activities:

Receipts — An alphabetical listing of all contributors of \$50 or more, their residential address, and the date received.

Expenditures — An alphabetical listing of all expenditures of \$50

or more, the exact amount and date of payment, name, address and purpose of the expenditure.

In-Kind Contributions — These are defined as anything of value other than money. Includes a listing of contributions valued at \$50 or more, the exact value, the date and from whom it was received, their residential address and a description of the contribution.

Liabilities — All outstanding unpaid financial obligations as of the last day of the reporting period. Includes the date incurred, the name and address to whom the liability is owed, and the reason for the liability.

**This form must be completed by each candidate and each treasurer on each reporting date.*

When Forms Must Be Filed:

Statement of Organization of a Political Committee (Form CPF-101)

- File *day* committee is organized.
- Contributions may not be accepted nor expenses incurred before filing this form with the Director of Campaign and Political Finance.
- Change in information already submitted must be reported to the Director within 10 days of the change.

Campaign and Finance Report (Form CPF-102)

The following must be filed regardless of whether any monies have been raised or expended and whether or not a candidate has been nominated or elected.

PRE—PRIMARY REPORT — File on or before the 8th day preceding the state primary. Information given should be accurate as to 10 days before the due date.

PRE—ELECTION REPORT — File on or before the 8th day prior to the election. Information given should be accurate as to 10 days before the due date.

YEAR-END REPORT — File on or before January 10, information complete as to December 31. This report must be filed every year.

- All reports must be received by the Office of Campaign and

Political Finance before the close of business on the day the report is due.

- Candidates and Treasurers are subject to penalties for failure to file.
- Candidates and Treasurers must *both* file because both have the authority to receive contributions and expend campaign funds. However, if a Candidate has no activity of his/her own, he/she may file a combined report with the committee Treasurer.

Requirements of Disclosure

- If a Candidate has no activity of his/her own, he/she may file a combined report with the committee Treasurer. (See individual forms for explicit instructions.)
- A Candidate may have only one political committee organized for his/her benefit.
- Campaign accounts must be kept separate from all other accounts a candidate may have.
- If a candidate loses in the primary, Candidates and Treasurer, if any, must continue to file 8 days before the election and again on January 10 in the year following the election.

Candidates and Treasurers must preserve detailed accounts, vouchers, and receipts until the term of office the candidate sought has ended and the account balance is zero with no outstanding liabilities. This applies to successful candidates and losers alike.

Contribution Limitations

An individual may contribute up to an aggregate of \$1,000.00 to a candidate and that candidate's committee in a single calendar year.

An individual under the age of 18 may not contribute over \$25 in one calendar year to a candidate or his/her committee or any other political committee.

A candidate, his/her committee, and multi-candidate committees may not accept a contribution from a business corporation, or from any association or organization comprised in whole or in part of business corporations.

Contributions listed from a trust, foundation or association must include the names and addresses of its principal officers.

The legal name and residential address of all donors to a political campaign must be given to the receiver of the contribution at the time the transaction takes place.

Contributions from the same person which in the aggregate in a calendar year exceed \$50 must be by check or other negotiable instrument.

Loans are defined as contributions except that bank loans made to a candidate in the ordinary course of business shall not be considered as such.

Contributions or anything of value other than cash or checks are considered in-kind contributions and must be reported. (Example: furniture, equipment, telephones, etc.)

Expenditure Limitations

Expenditures by a committee organized on behalf of a candidate for the General Court may be made for the enhancement of the political future of the candidate so long as such expenditure is not primarily for the candidate's or any other person's personal use.

A candidate may make expenditures from his/her personal funds without limitation for the purposes of the campaign. This includes contributions made to the committee organized on the candidate's behalf.

A business corporation may not expend money on behalf of any candidate, candidate committee, a multi-candidate committee, or committee or a political party.

All expenditures exceeding \$50.00 must be made by check.

The committee may not give in the aggregate in a calendar year more than \$100 to another candidate's committee. The total amount of such contributions shall not exceed \$1,500.00 in one calendar year.

Surplus money may be placed at interest in a savings account or money market account. No other type of investment is permitted with these funds. however.

Prohibited Conduct

- No state, county, city or town employee, other than an elected official may directly or indirectly solicit or receive any contributions or anything of value for any political purpose whatsoever.
- Soliciting or receiving campaign contributions in a public building is prohibited.
- No person in the employ or service of the public may be compelled to make a political contribution or to render any political service.

- No public official or employee may be prejudiced in their employment for failing to make a political contribution, or be so rewarded for making the same.

Examples

The most prevalent questions asked of the Office of Campaign and Political Finance arise under Section 6 (ways in which candidates and committees may spend their “war chests”) and Section 13 (solicitation of political contributions). The following may serve as examples of “dos and don’ts” as outlined by the advisory opinions from the Office of Campaign and Political Finance.

Section 6

- City, ward and town committees may pay reasonable travel and related expenses for their delegates to a political party convention. These expenses must be reasonable, and may not extend beyond payment for transportation to and from the convention, and appropriate room and board expenses through the duration of the convention, and delegate fees. Each committee must treat all of its delegates in an identical manner, and may not provide a higher stipend for one delegate as opposed to another.
- A political committee organized on behalf of a state senator cannot make a charitable contribution to a scholarship fund when the candidate is a principal of the fund and is significantly involved in the fund’s operation.
- A political committee organized on behalf of a county treasurer may not expend funds to retain counsel to represent the treasurer relative to indictments which allege violations of the law by the treasurer as a public official.
- A political committee organized on behalf of a state senator may expend funds to defray the legal costs associated with a defamation action commenced by the candidate provided that the nature of the interest in pursuing the action must be primarily a concern about its effect on one’s political future. A political committee may not expend funds on behalf of its candidate on this type of legal action if the primary purpose of the action is personal vindication for the candidate. In order for a political committee to incur such legal expenses, either the context in which the defamation arose must be related to one’s campaign for public office, such as issues emanating from campaign literature or appearances, or, the substance of the

defamatory words must be directly related to one's political future, such as words which impugn on one's integrity as a public official.

- A political committee organized on behalf of a state senator may make political expenditures for the enhancement of the political future of the candidate. The leasing of a vehicle primarily for traveling to and from appointments that directly relate to his district duties and legislative responsibilities would be an appropriate expenditure by this political committee. Any portion of the vehicle's use which is for other purposes may not be paid for by the political committee.
- A political committee may purchase a word processor so the candidate can communicate with constituents and expand his base of support and run for higher office, should he wish. Its use must be primarily restricted to political purposes, and therefore such an item may not be located in a state office. This item must remain the property of the committee, and may not be used primarily for anyone's personal use. At such time that the committee is dissolved the item must be disposed of in accordance with the dissolution requirements of the campaign finance law.
- A political committee organized on behalf of a state representative candidate may make a contribution to a certain charitable trust fund if it is of reasonable value and its purpose is to enhance the political future of the candidate in that he will receive publicity and create goodwill as a result of making the contribution.
- A political committee may organize and make expenditures for the purpose of influencing the vote on a ballot question. It is not necessary that a question be legally certified as appearing on the ballot, but rather, a political committee may make expenditures in anticipation that a question will appear on the ballot. The expenditures must be restricted, however, to influencing the outcome of initiative process.
- A political committee of an incumbent state legislator may make incidental expenditures for the purpose of determining his possible candidacy for federal office. The candidate may also be reimbursed for such expenditures, to the extent that they are permissible expenditures. If he does become a candidate for federal office he should establish a political committee in accordance with federal law, and utilize that committee for campaign finance activity for federal election purposes.

Section 13

- A person employed for compensation by the commonwealth or any county, city or town is not prohibited from making expenditures on behalf of a political committee, but may not be treasurer of such a committee. A committee organized on behalf of a statewide candidate may not make a payment to a political committee.
- A person employed for compensation by the commonwealth in an appointed position may not receive anything of value for any political purpose. However, a political committee organized on behalf of such a public employee other than one in a law enforcement, regulatory, or investigatory office, may hold a fundraiser and may receive contributions, subject to certain restriction.
- A political committee organized to further the interests of a political party may not solicit or accept checks from business corporations, even for a scholarship fund.
- An individual employed for compensation by the state, or any county, city or town, other than as an elected official, may not be the treasurer of a political committee. While the law does not specifically prohibit such an individual from being the Chairperson of a political committee, that function must be carried out in an extremely careful manner to avoid any activity that would appear to be directly or indirectly soliciting or receiving anything of value for political purposes.
- A candidate for the state legislature who is an employee of a state agency is subject to certain restrictions on his campaign activity. For example, he may not solicit or receive anything of value, directly or indirectly for that political purpose. He may not, as a person in the public service, give anything of value to another person in the public service for a political purpose. Also, his employment by a state agency which receives federal funds could subject him to the restrictions contained in the Hatch Political Activity Act, a federal law.
- A public employee receiving compensation, other than an elected official, may not solicit or receive contributions for any political purpose. Such persons may, however, be members of political committees or organizations. Public employees may make contributions to legally constituted political committees organized on behalf of other public employees, contribute up to \$1,000.00 in a calendar year to a political committee. Business

corporations are prohibited from engaging in candidate campaign finance activity. Corporations organized under G.L. c. 180 may make contributions in an incidental manner to a political committee organized on behalf of a candidate.

APPENDIX A

How to Request a Conflict of Interest Opinion:

- All requests must be in writing.
- The request must pertain to a question falling under Chapter 268A.
- Specific, relevant facts of an actual situation must be presented before an opinion will be given. One will not receive an opinion based upon a hypothetical situation.
- An advisory opinion will be given to an individual subject to the terms of Chapter 268A. The Commission will respond to the request of an authorized representative, such as an attorney.
- The Standards of Conduct established by Section 23 for all government employees may be enforced through administrative action by agency heads. The commission will usually not issue an opinion reviewing an activity clearly prohibited by agency guidelines. The Commission will also not review disciplinary actions taken by an agency head.
- The Commission may decline to render an opinion where the activity in question is the subject of adjudication before it or litigation in the courts, may be affected by pending legislation, or is under investigation by the Commission or some other law enforcement agency.

APPENDIX B

How to Request a Campaign and Political Finance Advisory Opinion:

- All requests must be in writing.
- Any candidate, state committee, political committee, member of the public, or any authorized representative thereof may request an advisory opinion regarding the application of Chapter 55.
- The request for an opinion must describe a specific activity or transaction and shall ask a specific question.
- The Director shall review all requests for advisory opinions. He may request that additional or more specific information or questions be submitted by the requesting person.

The Director may determine that:

- (a) a particular request for an advisory opinion poses issues which are not within his jurisdiction;
 - (b) the questions posed are not appropriate to an advisory opinion;
 - (c) sufficient information has not been provided by the requesting person.
- The Director may, for these reasons, determine that an advisory opinion will not be rendered. If such a determination is made, he shall, within a reasonable time, notify the requesting person that the advisory opinion will not be rendered. If such a determination is not made the Director shall, within a reasonable time, issue to the requesting person a written advisory opinion.

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